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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1904~~ 1905.

No. ~~539~~ 180.

EDWARD B. WHITNEY, AS TRUSTEE IN BANKRUPTCY OF DRESSER & CO., APPELLANT,

vs.

EMMA B. DRESSER.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED FEBRUARY 17, 1905.

(19,632.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 21, 1905.

	Market value.
991 shares of the capital stock of the American Brass Company	$138,740
370 shares of the capital stock of the New England Watch Company	13,875
87 shares of the capital stock of the American Pin Company	3,915
Total	$156,530

3 Deponent is informed and believes that said securities were deposited as collateral for loans, the proceeds of which loans were turned over to the firm of Dresser & Co., composed of the now bankrupts Daniel Le Roy Dresser and Charles E. Reiss, and used by said firm.

That no part of said debt has been paid, and that there are no setoffs or counterclaims thereto; except that should there be any equity remaining after the sale of such of said securities as are deposited as collateral for said loans, then the claim of deponent will be reduced by the amount of such equity. That no note has been received for said debt, no judgment has been rendered thereon, and deponent has not, nor has any person by her order, had or received any manner of security for said debt whatever.

EMMA B. DRESSER, Creditor.

Subscribed and sworn to before me this 22d day of August, 1903.

WALTER HAROLD CONERT,
[SEAL.] A Notary Public in and for the Province of Nova Scotia.

(Endorsed:) Proof of debt of Mrs. E. B. Dresser for $156,530.

4 District Court of the United States for the Southern District of New York.

In the Matter of DANIEL LE ROY DRESSER and CHARLES E. REISS, Individually and as Members of the Firm of Dresser & Co., Bankrupts.

At the city, county and State of New York, on the 29th day of February, 1904, came Emma B. Dresser and made oath and says: That Daniel Le Roy Dresser and Charles E. Reiss, composing the firm of Dresser & Co., persons against whom a petition for adjudication in bankruptcy has been filed, at and before the filing of said petition were and still are justly and truly indebted to said deponent in the sum of $88,145; that the consideration of said debt is as follows:

Prior to May, 1896, at the request of the now bankrupt, D. Le Roy Dresser, and of E. Reid Goodrich copartners, composing the firm of Dresser & Goodrich, deponent loaned to said firm of Dresser & Goodrich, for the purpose of borrowing money thereon by said firm (or for other purposes), the following securities, all of which said firm of Dresser & Goodrich promised to return to deponent:

822 shares of the capital stock of the American Brass Company (par value $1 per share) at 135 per share.

240 shares of the capital stock of the New England Watch Company (par value $25 per share) at $32 per share.

5 70 shares of the capital stock of the American Pin Company (par value $25 per share) at $40 per share.

Deponent is informed and believes that said securities were deposited by said firm of Dresser & Goodrich as collateral for loans, the proceeds of which loans were turned over to and used by said firm.

That in or about May, 1896, said firm of Dresser & Goodrich was dissolved, the now bankrupt Daniel Le Roy Dresser succeeding to the business of said firm, taking over all its assets and assuming all its liabilities, including deponent's claim against said firm.

That at the request of said Daniel Le Roy Dresser, and with deponent's knowledge and consent, the liability of said firm of Dresser & Goodrich for a return of said securities to deponent was assumed by said Daniel Le Roy Dresser, and the proceeds of the loans for which said securities had been deposited by said firm as collateral were turned over to said Daniel Le Roy Dresser and used by him in his business.

That in or about May, 1897, a copartnership was formed between the now bankrupts, Daniel Le Roy Dresser and Charles E. Reiss, under the firm name of Dresser & Co., said partnership succeeding to the said business of said Daniel Le Roy Dresser, taking over all his assets and assuming all his liabilities, including deponent's said claim against him.

That at the request of said Daniel Le Roy Dresser and Charles E. Reiss, composing the firm of Dresser & Co., and with deponent's knowledge and consent, the liability of said Daniel Le Roy Dresser for a return of said securities to deponent was assumed by said Daniel Le Roy Dresser and said Charles E. Reiss, composing the firm of Dresser & Co., and used by said firm in its business.

6 That, as deponent is informed and believes, the values of said securities on the 7th day of March, 1903, were as follows:

Shares of the capital stock of the American Brass Company (par value $100), $135 per share.

Shares of the capital stock of the New England Watch Company (par value $25), $32 per share.

Shares of the capital stock of the American Pin Company, (par value $25), $40 per share.

That the amounts of the loans for which the securities of deponent were deposited as collateral are as follows:

Creditor.	Amount.	Security.
United States Mortgage and Trust Company.....	$25,000	51 shares of American Brass Company stock.
American Exchange National Bank.....	67,500	28 shares American Brass Company stock. 240 shares New England Watch Company stock. 70 shares American Pin Company stock.
Coe Brass Company.....	30,000	300 shares American Brass Company stock.
Dime Savings Bank of Waterbury, Conn.....	37,000	443 shares American Brass Company stock.

The securities of deponent deposited as collateral for the loans of the Coe Brass Company and of the Dime Savings Bank of Waterbury, Conn., constitutes the only security for said loans, and the value of said shares on March 7, 1903, exceeded and now exceeds the amount of said loans. Deponent's claim, therefore, for the value of the securities deposited as collateral for the loans of the Coe Brass Company and of the Dime Savings Bank of Waterbury, Conn., should be reduced by the amount of equity in said loans existing on March 7, 1904, thus fixing the indebtedness of said bankrupts to deponent on 743 shares of American Brass Company stock at an amount equal to the sum of both loans, to wit, $67,000.

7 Deponent is informed and believes that the amounts due from said bankrupts to the United States Mortgage and Trust Company and to the American Exchange national bank each exceed the value of the security deposited as collateral therefor, and deponent therefore claims for the market value of said securities on March 7, 1903, the date of the filing of the petition herein, as follows:

79 shares American Brass Company stock at $135...	$10,665 00
240 shares New England Watch Company stock, at $32..	7,680 00
79 shares American Pin Company stock at $40.....	2,800 00
	$21,145 00

That no part of said debt has been paid, and that there are no setoffs or counterclaims thereto; that no note has been received for said debt, no judgment has been rendered thereon, and deponent has not, nor has any person by her order, had or received any manner of security for said debt whatever.

EMMA B. DRESSER, Creditor.

Subscribed and sworn to before me this 29th day of February, 1904.

WILLIAM H. WILSON, JR.,
[SEAL.] Notary Public, Kings County.

Certificate filed in New York county.

(Endorsed:) Amended proof of claim.—Filed March 3, 1904.

8 In the District Court of the United States for the Southern District of New York.

In the Matter of DANIEL LE ROY DRESSER and CHARLES E. REISS, Individually and as Members of the Firm of Dresser & Co., Bankrupts. In Bankruptcy. No. 5728.

To Hon. Stanley Walker Dexter, referee in bankruptcy.

Your petitioner respectfully shows:

That he is the trustee of the bankrupts above named, that he duly qualified as such on the 29th day of September, 1903, and since that date has been acting as such trustee.

That the proof of debt of Emma B. Dresser, claiming to be a creditor of the firm of Dresser & Co., was filed herein on the 26th day of August, 1903, and, upon oral and written objections made thereto by certain creditors, was held for further proof and argument.

That the same should not be allowed for the following reasons:

I. That it appears upon the face of the proof of debt submitted by the said Emma B. Dresser, that the securities therein alleged to have been loaned by her to the bankrupt Daniel Le Roy Dresser,
9 were loaned to said bankrupt individually and not to him as a member of the firm of Dresser & Co., or to said firm, and that therefore the said Emma B. Dresser is not entitled to recover the value of said securities or any part thereof from said firm of Dresser & Co., nor to prove the same as a debt against the estate of said firm, nor to participate in the dividends paid from the assets of said firm to the creditors thereof, and that she is not a creditor of the firm of Dresser & Co., as appears upon the face of her proof of debt as aforesaid.

II. That the said alleged debt proved by said Emma B. Dresser as aforesaid is unliquidated in amount, in that certain offsets and counterclaims are set forth in the proof thereof, to wit, certain equities, claimed by said creditor, the values whereof are not stated and are unknown, and that until the values of said equities are ascertained and deducted from the amount of said debt, the same cannot be liquidated as to amount and proved in bankruptcy.

III. That if the said Emma B. Dresser is a creditor of the firm of Dresser & Co. for any amount whatever, it is only to the extent of the moneys actually received by said firm as the proceeds of the

loans against which the securities, set forth in her proof of debt, are therein alleged to have been pledged; that the said proof of debt does not state the amount of said loans, or any of them; and that therefore the said debt therein alleged and sought to be proved cannot be liquidated in amount and proved in bankruptcy.

IV. Upon information and belief that the value of the securities set forth in said proof of debt are in excess of their actual values; that the said securities are unlisted stocks in private manufacturing corporations whose values are at the best problematical and difficult to determine, and that the facts upon which the alleged values are based should be set forth so that the actual values of said securities may be ascertained in the interest of the estate of the bankrupts and of the creditors thereof.

V. That the securities alleged, in said claim, as having been loaned by Emma B. Dresser to Daniel Le Roy Dresser, and which constitute the subject matter of said claim, were loaned to Daniel Le Roy Dresser individually and not to the firm of Dresser & Co., and that said Emma B. Dresser is, therefore, not entitled to prove said claim against the said firm of Dresser & Co., nor to participate in the distribution of the assets thereof until all of the creditors of said firm have been first paid in full.

That the attorneys of said Emma B. Dresser are Messrs. Butler, Notman, Joline & Mynderse, of No. 54 Wall street, in the borough of Manhattan, city of New York.

Wherefore, your petitioner prays that said proof of debt may be rejected.

EDWARD B. WHITNEY, Petitioner.

SOUTHERN DISTRICT OF NEW YORK,
State of New York, City and County of New York, } ss:

I, Edward B. Whitney, the petitioner mentioned and described in the foregoing petition, do hereby make solemn oath that the statements of fact therein contained are true according to the best of my knowledge, information and belief.

EDWARD B. WHITNEY.

Subscribed and sworn to before me this 21st day of January, 1904.

[SEAL.] EDWARD D. FIRTH,
Notary Public (No. 87), Kings Co.

Certificate filed in New York Co.

11 NEW YORK, March 7, 1904.

Before Stanley W. Dexter, Referee in Bankruptcy.

Appearances.

Messrs. Butler, Notman, Joline & Mynderse (by Mr. Larkin and Mr. Hargrave), for claimant.
George H. Gilman, Esq., for the trustee.

Hearing on Claim of Emma B. Dresser.

CARL G. RASMUS, called and sworn as a witness on behalf of the trustee, testified as follows:

Direct-examination by Mr. GILMAN:

Q. What is your occupation?
A. I am assistant treasurer of the United States Mortgage and Trust Company.
Q. Did you have a transaction with Mr. Dresser, in consequence of which certain stock of the American Brass Company was put up as collateral to a loan?
A. We did, sir.
Q. Will you state what the transaction was?
A. A loan was made to Mr. Dresser for $25,000, secured by 250 shares of Trust Company of the Republic stock and 51 shares of American Brass Company's stock.
Q. When was the loan made?
A. It was renewed the last time, February 3d, 1903.
Q. Can you state when it was first made?
A. Not very accurately, probably six months before that.
Q. Have you the original note here?
A. I haven't the original, but I have a copy of it, and I have a letter from Messrs. Rollins & Rollins, in which they acknowl-
12 edge receipt of the original note. Their man has charge of that, and he is out of town, and his papers are not accessible to-day. Here is a copy of the note.

Mr. LARKIN: We do not object to a copy.

Q. Will you furnish a copy to be put in the evidence?
A. This is a copy.
Q. May we have it?
A. Yes.

Mr. GILMAN: I offer the copy of the note in evidence:

The note referred to was dated February 13, 1903, for $25,000, and it was marked "Emma C. Dresser Claim, Exhibit No. 1, March 7, 1904."

Cross-examination by Mr. LARKIN:

Q. Are you familiar with the form of the prior note of which this note is the last of the series?
A. The notes are all the same.
Q. I ask you if you are familiar with them?
A. Yes, sir.
Q. In each case they were signed by D. Le Roy Dresser?
A. Yes, sir; D. Le Roy Dresser.
Q. When was the first of these notes made?
A. I should think somewhere about six months previous to February, 1903; may have been more, may have been less.
Q. Then there was only one extension?
A. I think they were made for three months and renewed for three months.
Q. One renewal only?
A. This was the second renewal of the original note.
Q. You don't know anything about the application of the funds resulting from this loan, do you?
A. No.
13 Q. Have you examined the check that was given by your company?
A. No.
Q. Could you find that check?
A. I think we could.
Q. Will you send me a copy of it, please?
A. Yes.

Stipulated that the signature of the witness be waived.

IRVING J. KNOX, called, testifies as follows:

It is stipulated that the swearing of the witness be waived.

Direct examination by Mr. GILMAN:

Q. What is your occupation, Mr. Knox?
A. I am secretary of the Commonwealth Trust Company.
Q. And were you formerly connected with the Trust Company of the Republic?
A. Yes, sir; I was assistant secretary.
Q. Do you know anything of the transactions in which certain stock of the American Brass Company was put up in connection with the loan made by your company either to Mr. Dresser or Dresser & Company?
A. Yes, sir; I remember it.
Q. Can you state what the facts were in connection with that?
A. The loan was made on July 24th, I believe.
Q. What year?
A. 1902 by D. Le Roy Dresser on 300 shares of the American

rass Company's stock, and it was paid on October 13 of the same ear.

Q. Do you know who paid it?

A. That I don't know. Our records show that a loan was made n that day.

Q. Do you know to whom these 300 shares of stock were delivered, do your records show that?

A. No, sir; our records show that the loan was paid on that date, and the stock was surrendered.

Mr. LARKIN: We will admit that the loan was taken by the Coe rass Company.

Cross-examination by Mr. LARKIN:

Q. Do you know personally of the fact that you have testified to?

A. I know by examination of the records.

Q. The records show that the note was made by D. Le Roy Dresser s an individual?

A. Yes, sir.

Q. How does the record read?

A. The record reads that the loan was made on that date to D. e Roy Dresser.

Q. Do you remember what date that was the note was made?

A. July 24, 1902, I believe.

Q. Do you know anything about the application of money that ou loaned to Mr. Dresser on this stock?

A. I know that we gave him three checks for $10,000 each.

Q. Now have you got the checks?

A. No, sir; I haven't got them in my possession.

Q. Do you know where they are?

A. Yes, sir.

Q. Will you send me copies of them?

A, Yes, sir.

Q. What sort of note was this, ordinarily cut-throat demand note?

A. Yes, sir.

Q. Grab everything in sight until paid?

A. Yes, sir.

It is stipulated that the signature of the witness to this testimony e waived.

OTIS S. NORTHROP, called as a witness, testified as follows:

Stipulated that the swearing of the witness be dispensed with.

Direct-examination by Mr. GILMAN:

Q. Mr. Northrop, what is your occupation?

A. Treasurer of the Dime savings bank.

Q. Do you know anything of the transaction with Mr. Dresser, of

the firm of Dresser & Company, under which some four hundred and forty-three shares of the American Brass Company's stock were pledged with the Dime savings bank as collateral to a loan, and if so, state what the transaction was?

A. The original note and loan was made before I was actively connected with the bank.

Q. Was the loan subsequently renewed?

A. Yes, sir; it was changed, because the collateral was changed.

Q. Tell us all you know about the transaction.

A. I think the stock that was originally pledged was that of the Benedict & Burnham Manufacturing Company and Holmes, Boothe & Hayden's, and they were taken over by the American Brass Company and the stock that we held was deposited and stock of the American Brass Company issued in exchange.

Q. What stock is now under the loan?

A. 443 shares of American Brass.

Q. Have you the note or other evidence of the loan with you?

A. Yes, I have the note.

Q. Will you produce it?

Witness does so.

Q. This is your regular printed form, isn't it?

A. Yes.

Q. You will be willing to let us have a copy of it?

A. Yes; I will mail you a copy.

Mr. GILMAN: I offer the original note in evidence.

It is consented that the witness furnish a copy of this note, and that the same be marked in evidence as Exhibit No. 2 of this date.

16 Q. Do you know to whom the amount of that loan was paid?

A. No, I do not.

Q. Would your records show to whom the check was paid?

A. I suppose I could find the old check.

Q. Will you look it up and find the check and send a copy of the check to me?

A. That is, to the referee?

Q. Well, send it to the referee.

A. All right. A copy of the check and endorsement on it?

Q. Yes.

A. Yes.

Cross-examination by Mr. LARKIN:

Q. Mr. Northrop, do you recall in whose name that stock stood originally when you made the loan?

A. Emma Burnham Dresser.

Q. You understand her to be the wife of Mr. Dresser—D. Le Roy Dresser?

A. Yes.

Q. Then, after the taking over of the Holmes, Boothe & Hayden, and the other subsidiary companies of the American Brass Company, the stock of the American Brass Company was substituted for Holmes, Boothe & Hayden's and other stock, was it not?

A. Yes.

Q. And the stock of the American Brass Company still stood in Mrs. Dresser's name, did it not?

A. I am not sure.

Q. And later it was transferred into the name of Daniel Le Roy Dresser?

A. Yes, sir.

Q. You don't know anything about the application of the proceeds of this loan, do you; you were not connected with the bank at the time?

A. No, I do not.

Mr. GILMAN: I rest.

Mr. LARKIN: I move to strike out the objections and allow the claim as filed. I move to allow the claim and strike out the objections on the ground there is no proof tending to show anything to disprove that the claim for the value of these securities is as her sworn proof of claim set forth; that all the testimony that has been introduced simply as a method, and they have offered absolutely nothing in opposition or to disprove the claim.

The REFEREE: I won't dismiss it. I do not think this of itself is sufficient to shift the burden of proof. You must connect it by further evidence, Mr. Gilman. You will have to offer further evidence or else I will have to sustain the claim.

Mr. GILMAN: I shall ask for an adjournment to consider the question. I am not sure whether I shall let the referee make his ruling and take a certificate or whether I shall bow to the ruling of the referee.

After further informal discussion it was agreed that the referee should make his ruling.

The REFEREE: I dismiss the objections and allow the claim.

Mr. GILMAN; I ask for a certificate.

The REFEREE: Is this claim liquidated, I am asking you now; how do you establish the equity. I understood you had agreed on that.

Mr. LARKIN: It is immaterial what the equity is because if it is above the amount of the debt all we do is to deduct it from the value of the securities which will leave the amount of the debt. In other words, our claim is for $67,000 in those two cases, and the amount we will be required to pay, which is the value of the securities less the equity. In other words, no matter what the equity is our claim

will always be for the same amount, $67,000, as long as there is an equity.

The REFEREE: Where there is no equity?

18 Mr. LARKIN: Where there is no equity we claim for the value of those securities on March 7th, the date of the filing of the petition, and Mr. Gilman, I thought, had agreed as to the value of those securities.

The REFEREE: If you haven't agreed you must introduce evidence as to the value of those securities.

It is consented that an affidavit be offered in lieu of witnesses to be called to prove the facts for the purpose of fixing the value of the securities in the claim.

Mr. LARKIN: I offer in evidence an affidavit of Robert F. Griggs, of Waterbury, Connecticut, as to the value of certain securities on March 7, 1903.

Received in evidence and marked "Claim of Emma B. Dresser, Ex. No. 3, March 7, 1904."

(Copy.)

$25,000.00. NEW YORK, Feb'y 13th, 1903.

Ninety days after date for value received, I promise to pay to the United States Mortgage and Trust Company, or order, at the office of said company in the city of New York, twenty-five thousand ^{00} dollars with interest at the rate of six per cent. per annum, having deposited with said company as collateral security for payment thereof, the following property, viz:

250 shares Trust Co. of the Republic
51 " American Brass Co.

which I hereby authorize said company on non-performance of any obligation herein contained, to sell in such manner as it may deem proper, without notice, either at any broker's board, or at any public or private sale, applying the proceeds to the payment of the principal and interest of this note after deducting all legal and other costs and expenses of collection, sale and delivery, and accounting

19 to the promissor for the surplus, if any. In case of deficiency after sale hereunder, the promissor agree- to pay the amount thereof, with legal interest.

In case of depreciation in the market value of the security held as collateral for this loan, a payment is to be made on account, or additional satisfactory securities pledged at the option of the said payee. In case of failure to do so, this note shall be deemed to be due and payable forthwith, anything herein before expressed to the contrary notwithstanding, and the payee may immediately sell the collateral as hereinbefore provided. It is understood and agreed that upon sale of collateral hereunder, the said payee may purchase

and hold for his own account, and not as a pledgee, any property offered at such sale. All collaterals herein mentioned and the proceeds thereof shall also be held and treated as collateral security, for any and all other debts or claims held against the promissor by said company, and which may be outstanding and unpaid at any time; and all other or further collateral securities which shall be either added to or substituted for the above, shall be subject to the same conditions and agreements.

(Signed) D. LE ROY DRESSER.

(On margin:) United States Mortgage and Trust Company.
(Endorsed:) Emma B Dresser Claim Ex. 1, M'ch 7/04.

20 District Court of the United States for the Southern District of New York.

In the Matter of DANIEL LEROY DRESSER and CHARLES E. REISS, Individually and as Members of the Firm of Dresser & Co., Bankrupts.

STATE OF CONNECTICUT, }
County of New Haven, } *ss:*

Robert F. Griggs, being duly sworn, says: That he is engaged in business as a stockbroker in the city of Waterbury, State of Connecticut, and that he is familiar with the market value of the securities of the American Brass Company, the New England Watch Company and the American Pin Company.

To the best of the deponent's knowledge the market value of such securities on March 7, 1903, was as follows: Shares of the capital stock of the American Brass Company (par value $100), $135 per share; shares of the capital stock of the New England Watch Company (par value $25), $32 per share; shares of the capital stock of the American Pin Company (par value $25), $40 per share.

That said market value is based upon sales of said securities on or about that date.

ROBERT F. GRIGGS.

Sworn to before me this first day of March, 1904.

CHAS. W. GILLETTE,
[SEAL.] Notary Public.

(Endorsed:) Affidavit, Exhibit No. 3.

21 District Court of the United States, Southern District of New York.

In the Matter of DRESSER & COMPANY, Bankrupt.

Claim of Emma B. Dresser.

It is agreed between the attorneys for the claimant and for the trustee,

That the paper annexed hereto and marked A is a copy of the note referred to in the testimony of Irving J. Knox as given to the Trust Company of the Republic, and that it was assigned to the Coe Brass Company and is now held by the latter company.

That the paper annexed hereto and marked B is a copy of the note referred to in the testimony of Otis S. Northop as given to the Dime savings bank, and now held by it.

That the paper annexed hereto and marked C is a copy of the check given by the said bank as the consideration of said loan and endorsements thereon.

That the American Exchange national bank is the holder of a note for $14,000, made by Daniel Le Roy Dresser to the order of said bank under which was pledged 28 shares of American Brass Company, 240 shares of New England Watch Company and 70 of the American Pin Company, as appears by the proof of claim of said bank on file, and that the said note is a renewal of a loan made November 17, 1898, the proceeds of which loan were credited to the account of said Dresser in American Exchange national bank on said November 17, 1898.

22 That the said American Exchange national bank holds a note for $53,558.75, made by Alexander Greig, Thomas F. Goodrich and Daniel Le Roy Dresser, which is a renewal of part of a loan made to the same parties on March 24, 1902, for $75,000.

That the check for the proceeds of the original loan was made payable to the order of Dresser, Goodrich and Greig.

That the said bank also holds three notes each for $5,000, made by Dresser & Co. to their own order endorsed Dresser & Co., D. Le Roy Dresser, dated respectively September 25, 1902, September 25, 1902, February 25, 1903.

That the said bank claims to hold the securities collateral to the $14,000 note as against the $53,000 note and the liability of Dresser as endorser on the three $5,000 notes.

That the paper hereto annexed and marked B is a copy of a check given to Mr. Dresser by the United States Mortgage and Trust Company as the proceeds of the note of which Exhibit A is a renewal.

BUTLER, NOTMAN, JOLINE & MYNDERSE,
Att'ys for Claimant.

GEORGE H. GILMAN, Att'y for Trustee.

(Copy.)

$30,000.00. NEW YORK, July 24th, 1902.

On demand for value received, I hereby promise to pay to the Trust Company of the Republic, New York, or order, thirty thousand dollars, at office of said trust company, in gold coin or United States notes or Treasury notes, which are a legal tender, having deposited with said trust company as collateral security for the payment of this note, and also as collateral security for all other present or future indebtedness or liability of any kind on my part to
23 the said trust company, absolute or contingent, due or not due, the following property, viz: 300 American Brass Co. and hereby authorize said trust company to hold the said property in its possession or under its control, or which may hereafter come into its possession or control, in which I have or hereafter may have interest, and all present or future indebtedness or liability of said trust company to me, whether due or not due, as security not only for payment of this note, but of every indebtedness or liability on my part to it hereinbefore specified, and to apply any such indebtedness or liability on its part towards the payment or extinction of any such indebtedness or liability on my part or to set off the one against the other, including in either case my indebtedness on this note, and that if, in the opinion of the said trust company or any of its officers, the value of the said collateral securities at any time prior to maturity of this note, should be less than — dollars, at which they are estimated, I will, upon written demand by mail, addressed to me at New York, N. Y., 346 Broadway furnish such further security as will be satisfactory to said trust company; and in case of failure so to do within one day after mailing such demand, this note shall immediately become due though the time of its payment shall not then have elapsed and I hereby give full authority to said trust company to sell the whole or any part of the said property, except money, or any such indebtedness on its part, at any broker's board, or at public or private sale, whenever this note shall fall due and be unpaid, or upon the nonpayment of any indebtedness or liability aforesaid on my part to it, and without notice to me or any other person by advertisement or otherwise of intention to sell, or of the time or place of sale, and without demand of payment of this note or any of the said indebtedness or liability; and after deducting all expenses of collection and sale, to apply the residue of the proceeds in payment of all or any of
24 said indebtedness or liability, in whole or in part, due or not due, including this note, making a rebate of interest upon those not due. And I agree to be liable to the said trust company or other holder hereof for any deficiency; and upon any sale hereunder the said trust company or other holder hereof may purchase the whole or any part of the property sold. In case of my suspension, failure or insolvency any and all indebtedness of mine to the

said trust company, whether present or future and whether evidenced by this note or otherwise, shall become immediately due.

D. LE ROY DRESSER.

"A."

$37,000.00. WATERBURY, CONN., January 1, 1902.

On demand, for value received, I promise to pay the Dime Savings Bank of Waterbury, Conn., at its banking house, thirty-seven thousand dollars, with interest at the rate of 5 % *per cent.* per annum, payable semi-annually in advance.

As collateral security for the payment of this note I have deposited with and hereby pledge to said Dime savings bank four hundred and forty-three shares of the capital stock of the American Brass Co. of Waterbury Conn.

It is hereby agreed that in the event that the market value of the securities hereby pledged, or of any additional or substituted collateral, shall become by depreciation, or be for any other reason at any time less than 20 per cent. in excess of the amount of the principal and interest unpaid of this note, such a payment shall forthwith be made on said note as will raise the market value of said securities to 20 per cent. in excess thereof.

Also, that in the event of my failure to make such payment, or of default of payment of any part of the interest due and payable on said note, or of default of payment of the whole of the principal sum of said note after demand, this note shall be deemed to be due and payable forthwith (no notice of failure of the market value as above, being required to be given me), and the said Dime savings bank is hereby authorized forthwith to sell any portion or all of said securities, or of any additional or substituted collateral, without notice to me, at such time or times and in such manner as the officers of said Dime savings bank shall in their discretion deem proper, at public or private sale, applying the net proceeds to the payment of this note and interest thereon, and expenses of sale, accounting to me for any surplus. Also, that in the event that there shall be a deficiency after such sale, I promise to pay said Dime savings bank the amount thereof forthwith, with interest. Also, that any excess of security upon this note shall be, at the option of the Dime savings bank, applicable to any other notes or claims held by said Dime savings bank against me.

(Signed) D. LE ROY DRESSER.

Copy

"B"

EXHIBIT "C."

The Waterbury National Bank.

No. 60,322. WATERBURY, CONN., Aug. 9th, 1897.

The Mechanic's National Bank of the City of New York

Pay to the order of Mercantile Nat. Bank New York thirty-seven thousand dollars

$37,000.00. A. M. BLAKESLEY, Cashier.

(Endorsed:) Received payment through the New York clearing house Aug. 9, 1897. The Mercantile National Bank of the City of New York.

26 United States Mortgage & Trust Company.

No. 4206. NEW YORK, March 13, 1902.

National Bank of Commerce, in New York,

Pay to the order of D. Le Roy Dresser thirty-five thousand 00/100 dollars.

ARTHUR TURNBULL,
Third Vice Pres't.

CLARK WILLIAMS, Treasurer.

Endorsements.

(Signed:) D. Le Roy Dresser.
(Stamped:) Pay Western national bank or order Dresser & Co.
(Stamped:) March 14 1902, received through New York clearing house Western national bank

District Court of the United States, Southern District of New York.

In the Matter of DRESSER & COMPANY, a Bankrupt.

Certificate of Referee.

That on or about September 1, 1903, and prior to the election of the trustee herein, objection was made to the allowance of
27 the proof of claim filed on behalf of Emma B. Dresser, and that I directed testimony to be taken under such objection. That thereafter and on or about January 21, 1904, the trustee filed verified objections to said claim and I directed that an adjournment be taken for the purpose of enabling the claim to be liquidated or the proof of claim amended, and that a hearing on the objection be brought on upon two days' notice.

That on the 3d day of March, 1904, notice was served upon the trustee for a hearing on the objection on March 7, and upon the 3d day of March an amended proof of claim was filed.

That on the 7th day of March the parties appeared before me and the trustee examined certain witnesses.

All the testimony taken before me is hereto annexed.

That the trustee rested, and I thereupon granted a motion to dismiss the objection.

The verified amended proof of claim filed by claimant is on its face *prima facie* proof of the indebtedness of Dresser & Co. to claimant and the testimony taken herein is insufficient to rebut such proof.

The foregoing is certified to the district judge for his opinion.

Dated March 25, 1904.

STANLEY W. DEXTER,
Referee in Bankruptcy.

(Endorsed:) Certificate of referee on claim of Emma B. Dresser. — Filed March 25, 1904.

28 At a stated term of the district court of the United States, held in and for the southern district of New York, at the court rooms thereof, in the Post Office building in the city of New York, on the 4th day of April, 1904.

Present: Hon. George C. Holt, district judge.

In the Matter of DANIEL LE ROY DRESSER and CHARLES E. REISS, Individually and as Members of the Firm of Dresser & Co., Bankrupts. In Bankruptcy. No. 5728.

On the proof of claim and the amended proof of claim of Emma B. Dresser, filed herein respectively August 25, 1903, and March 3, 1904, the petition of Henry B. Whitney, trustee of the bankrupts above named, verified January 21, 1904; the testimony taken on behalf of said petitioner at the hearings held before Stanley W. Dexter, Esq., referee; the decision of said referee dismissing the trustee's objections and allowing the claim of said Emma B. Dresser and the certificate of said referee thereon, and upon all the papers and proceedings heretofore had herein, and after hearing George H. Gilman, Esq., attorney for said trustee, and Adrian H. Joline, Esq., of counsel for the claimant, it is, on motion of Butler, Notman, Joline & Mynderse, attorneys for said claimant,

Ordered, that said decision of Stanley W. Dexter, referee, dismissing the objections filed by the trustee, and contained in his petition verified January 21, 1904, and allowing the claim of Emma
29 B. Dresser, be and the same hereby is in all respects affirmed.

GEO. C. HOLT, J.

(Endorsed:) Order filed Ap'l 4, 1904.

District Court of the United States for the Southern District of New York.

In the Matter of DANIEL LE ROY DRESSER and CHARLES E. REISS, Composing the Firm of Dresser & Company, Bankrupts.

Edward B. Whitney, the trustee of the above named bankrupt, conceiving himself aggrieved by the order and judgment made and entered herein on the 5th day of April, 1904, in the above entitled proceeding, wherein and whereby it was adjudged that the claim of Emma B. Dresser against the estate of the above named bankrupt be allowed and that the objections of the said trustee thereto be dismissed, does hereby appeal from such order and judgment to the United States circuit court of appeals for the second circuit, for the reasons specified in the assignment of errors which is filed herein, and he prays that this appeal may be allowed and that a transcript of the proceeding and papers upon which said order and judgment was made, duly authenticated, may be sent to the United States circuit court of appeals for the second circuit.

Dated New York, April 9, 1904.

GEORGE H. GILMAN,
Attorney for Trustee, Appellant,
67 Wall Street, New York City.

30 The foregoing petition on appeal is granted and the claim in appeal herein is allowed.

Dated New York, April 12, 1904.

GEO. C. HOLT,
U. S. District Judge.

(Endorsed:) Petition of appeal.—Filed Apr. 12/04.

UNITED STATES OF AMERICA,
Second Judicial Circuit, Southern District of New York, } ss:

To Emma B. Dresser, Greeting:

You are hereby cited and admonished to be and appear before a United States circuit court of appeals for the second circuit, to be holden at the borough of Manhattan, in the city of New York, in the district and circuit above named, on the 11th day of May, 1904, pursuant to an appeal filed in the clerk's office of the district court of the United States for the southern district of New York, wherein Edward B. Whitney as trustee of Daniel Le Roy Dresser, and Charles E. Reiss, composing the firm of Dresser & Company, bankrupts, is the appellant, and you are the appellee, to show cause, if any there be,

firm of Dresser & Goodrich was dissolved, the bankrupt Dresser succeeding to the business, taking all its assets and assuming all its liabilities, including the debt due to the claimant. That this transfer was made at the request of Dresser with the knowledge and consent of claimant, Dresser assuming the liability of the firm of Dresser & Goodrich for a return of the said securities, the proceeds of the loans for which the securities were pledged having been turned over to Dresser and used by him in his business.

That in May, 1897, the copartnership between the bankrupts was formed under the name of Dresser & Co., which succeeded to the business of Dresser, taking all his assets and assuming all his liabilities including claimant's said claim against him. That at the request of Dresser & Co., and with the consent and knowledge
35 of claimant the liability of Dresser fo a return of said securities to claimant was assumed by Dresser & Co., the proceeds of the loans being used by the firm in its business.

The proof of claim proceeds to state in detail the amounts of the loans for which the claimant's securities were deposited as collateral and the value of such securities on March 7, 1903, when the petition in bankruptcy was filed.

The proof concludes with the statement that no part of the debt has been paid, that there are no set-offs or counterclaims and that there is no security of any kind for the said debt.

The objections of the trustee, which it will be remembered relate to the original and not to the amended proof, are, in substance, as follows:—

First. That it appears on the face of the proof that the claimant's securities were loaned to Dresser individually and not to Dresser & Co.

Second. That the debt is unliquidated, the proof showing certain equities, the amount of which is unknown.

Third. That if claimant is a creditor of Dresser & Co., for any amount it is only to the extent of the moneys actually received by the said firm as the proceeds of loans; that the amount of the said loans is not stated, and, therefore, the amount of the said debt can not be liquidated.

Fourth. That the value of the securities as set forth in said proof is in excess of their actual value.

36 Fifth. That the securities alleged in said proof of claim were loaned to Dresser individually and not to the firm of Dresser & Co., and claimant is, therefore, not entitled to prove said claim against the firm of Dresser & Co., or share in the assets of the firm until all the firm creditors have been paid in full.

Upon the issue thus framed the trustee assumed the burden and introduced evidence tending to show that the loans in question were negotiated by and the proceeds delivered to Dresser. There was nothing to show that the proceeds did not go into the firm business, indeed the endorsement of Dresser & Co., on one of the checks for

$35,000. indicates that it was deposited to the credit of the firm and was used in the firm's business.

At the close of the trustee's testimony claimant's counsel moved to strike out the objections and allow the claim. After consideration the motion was granted, the referee ruling that

"The verified amended proof of claim filed by the claimant is, on its face, *prima facie* proof of the indebtedness of Dresser & Co., to claimant and the testimony taken herein is insufficient to rebut such proof."

Upon certificate to the district judge the decision of the referee was affirmed and the trustee appealed to this court.

The assignments of error are substantially as follows:

37 That the court erred (1) in allowing the claim of Emma B. Dresser; (2) in not adjudging the claim insufficient upon its face; (3) in not adjudging that the proof and objections raised an issue as to which the burden was on the claimant; (4) in that it did not adjudge that the *prima facie* effect of said proof of claim was met by the testimony offered; (5) in that the judgment was contrary to the evidence.

There is no question as to the value of the securities or the amount of the claim, the trustee conceding that it is a valid claim against the individual estate of the bankrupt Dresser.

George H. Gilman, for appellant.

Adrian H. Joline, for appellee.

COXE, J.:

Several of the objections urged against the original proof were obviated by the amended proof, and it is manifest that the issue now arises on the amended proof and objections thereto.

It is, at least, doubtful whether the objections are sufficient to present any of the questions now discussed but as the point has not been seriously pressed we shall regard them as presenting fairly the following questions:

First. Does the amended proof, upon its face, state a claim against Dresser & Co.? And

Second. Is it *prima facie* evidence of the indebtedness as therein stated?

38 It is contended by the appellant that the agreement of the firm of Dresser & Co. to be valid must be in writing and as no written agreement is filed with the proof, pursuant to section 57*b* of the law, it must be presumed that no such writing exists and, therefore, the proof is invalid on its face.

The paper is, no doubt, evidence to establish the allegations of the proof of claim but failure to plead it raises no presumption against its existence. *Non constat* the writing which the appellant considers necessary may be in the possession of the claimant to be produced when an issue is presented requiring its production.

But the transaction is not, we think, within the statute of frauds. In Booth *v.* Eighmie, 60 N. Y. 238, the court says: "The test to be

applied under the statute in every case, is whether the party sought to be charged is the principal debtor primarily liable, or whether he is only liable in case of the default of a third person; in other words, whether he is the debtor or whether his relation to the creditor is that of surety to him for the performance, by some other person, of the obligation of the latter to the creditor."

In Bank *v.* Chalmers, 144 N. Y. 432, the court says: "Wherever the facts show that the debtor has transferred or delivered to the promissor, for his own use and benefit, money or property in consideration of the latter's agreement to assume and pay the outstanding debt, and he, thereupon has promised the creditor to pay, that promise is original, upon the ground that by the acceptance
39 of the fund or property under an agreement to assume and pay the debt the promissor has made that debt his own, has become primarily liable for its discharge, and has assumed an independent duty of payment irrespective of the liability of the principal debtor."

See also as bearing on the question involved: Hendrick *v.* Lindsay, 93 U. S. 143; Johns *v.* Wilson, 180 U. S. 440; Barlow *v.* Meyers, 64 N. Y. 41; Coster *v.* The Mayor, 43 N. Y. 399.

The language quoted is applicable to the present situation. The bankrupts took over the entire property of Dresser, including the claimant's securities and the moneys obtained from the loans, and assumed all his liabilities. The benefits to be derived from the claimant's property were transferred to the firm and this constituted a new and sufficient consideration to support its promise and obligation to return or account for the securities. The averments of the proof leave no doubt as to the true nature of the transaction. The claimant has lost the possession of her securities, the bankrupts took them, obtained money thereon, which they used in their business, and agreed to return them to the claimant.

There is some obscurity in the allegation that the money derived from the loans was turned over to the bankrupts, but it is evidently due to a clerical omission, and is not fatal to a document which need not necessarily conform to the strict rules of pleading. The amended proof of claim being properly verified and valid upon its face is *prima facie* evidence of the indebtedness of the bankrupts.

40 We are dealing here with a statute the primary object of which is to collect the property of the bankrupt speedily and divide it equally among his creditors. Analogies drawn from pleadings in actions at common law and in equity furnish little assistance in the interpretation of such a law. If the doctrine be once established that a proof of claim in bankruptcy is entitled to no greater weight than a complaint in an ordinary action at law the most serious results will follow. Any vindictive or contumacious creditor can, by filing objections compel creditors to come from distant States and even from foreign countries to testify in support of their claims before a word of testimony impeaching their validity has been adduced. No one disputes that in the absence of objection the

proof of claim stands as sufficient warrant for the payment of a dividend based thereon. It is not then a mere pleading, confessedly it possesses some probative force. This being so it is not easy to approve the logic which deprives it of all weight as evidence upon the mere filing of an objection. If the appellant's contention be sustained an efficient administration of the law might, as we have seen, be made difficult, if not impossible.

We see no reason or necessity for such an interpretation of the law. On the other hand a construction which requires the objector to offer some proof before subjecting the creditor to the expense and annoyance of presenting sustaining evidence seems to be in
41 accord with the intent and purpose of the act and to present a simple, efficient and perfectly fair rule of procedure. In a vast majority of instances the claims of creditors are susceptible of the most simple proof. The trustee has the bankrupt's books at his disposal and can at any time call upon the bankrupt for assistance. In cases where exaggerated or fraudulent claims are filed there is no difficulty in ascertaining and proving facts sufficient to establish the true character of the claim, thus putting the claimant upon his proof.

The subject was carefully examined *In re* Sumner, 101 Fed. Rep. 224, and the conclusion was reached that under section 57 *a*, *b*, *d* and *f* of the act the objector, though not required to disprove the claim must produce "evidence whose probative force shall be equal to, or greater than, the evidence offered in the first instance by the claimant."

This, we think, is a correct statement of the law and is in accord with general order XXI (6) which seems to indicate that the claim must stand until evidence has been adduced which authorizes the referee to expunge or reduce it. See also *In re* Shaw, 109 Fed. Rep. 780; *In re* Filter, 7 *id.* 904.

The order of the district court is affirmed.

(Endorsed:) United States circuit court of appeals, second circuit. In the matter of Samuel Le Roy Dresser and Charles E. Reiss, bankrupts. Edward B. Whitney, trustee, appellant, Emma B. Dresser, claimant, appellee. Decision Coxe J., United States circuit court of appeals, second circuit. Filed Jan. 9, 1905. William Parkin, clerk.

42 At a stated term of the United States circuit court of appeals, in and for the second circuit, held at the court rooms in the post office building in the city of New York, on the 19th day of January one thousand nine hundred and five.

Present: Hon. William J. Wallace, Hon. William K. Townsend, Hon. Alfred C. Coxe, circuit judges.

In the Matter of DANIEL LE ROY DRESSER and CHARLES E. REISS, Bankrupts; EDWARD B. WHITNEY, as Trustee, Appellant.

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the district court of the United States, for the southern district of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the order of said district court be and it hereby is affirmed with costs.

It is further ordered that a mandate issue to the said district court in accordance with this decree.

W. J. W.
W. K. T.
A. C. C.

43 Endorsed: United States circuit court of appeals, second circuit. *In re* Dresser. Order for mandate. United States circuit court of appeals second circuit. Filed Jan. 19, 1905. William Parkin, clerk.

44 In the Supreme Court of the United States.

EDWARD B. WHITNEY, as Trustee in Bankruptcy of Dresser & Co., Bankrupts, Appellant,
against
EMMA B. DRESSER, Appellee.

I certify that in my opinion the determination of the questions involved in the allowance of the claim of Emma B. Dresser, the above named appellee, against the estate of the above named bankrupts in the hands of the above named Edward B. Whitney as trustee in bankruptcy thereof, is essential to a uniform construction of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, throughout the United States.

Dated at Washington, D. C., February 1, 1905.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

Endorsed: *In re* Dresser & Co., bankrupts. Certificate. United States circuit court of appeals, second circuit. Filed Feb. 6, 1905. William Parkin, clerk.

45 In the Supreme Court of the United States.

EDWARD B. WHITNEY, as Trustee in Bankruptcy of Dresser & Co., Bankrupts, Appellant,
against
EMMA B. DRESSER, Appellee.

And now comes Edward B. Whitney as trustee as aforesaid, appellant, by his counsel, and respectfully represents that he feels himself to be aggrieved by the proceedings and decree in the above entitled cause in the United States circuit court of appeals for the second circuit, and says that in the record and proceedings therein there is manifest error in each and every one of the following rulings of the court, to wit:

First. In overruling appellant's assignment of error that the district court of the United States in and for the southern district of New York erred in that it allowed the claim of Emma B. Dresser against the estate of the above named bankrupts.

Second. In overruling the appellant's assignment of error that said court erred in that it did not adjudge that the said proof of claim was insufficient on the face thereof.

Third. In overruling the appellant's assignment of error that said court erred in that it did not adjudge that the burden of proof was on the claimant.

Fourth. In overruling the appellant's assignment of error that said court erred in that it did not adjudge that the *prima facia* effect of said proof of claim was met by the testimony offered on behalf of the trustee.

46 Wherefore the appellant respectfully prays that the errors assigned be examined and corrected by this honorable court and that the judgments entered herein by the district court and circuit court of appeals be reversed and the cause remanded for further proceedings not inconsistent with law.

Dated, New York, January 31, 1905.

EDWARD B. WHITNEY,
As Trustee of Dresser & Co., Bankrupts, Appellant.

Endorsed: *In re* Dresser & Company, bankrupts. Assignment of errors. United States circuit court of appeals, second circuit. Filed Feb. 6, 1905. William Parkin, clerk.

47 UNITED STATES OF AMERICA, Southern District of New York, } *ss.*:

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 46 inclusive, contain a true and com-

plete transcript of the record and proceedings had in said court, in the case of In the matter of Daniel Le Roy Dresser and ano., bankrupts, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 8th day of February in the year of our Lord one thousand nine hundred and five and of the Independence of the said United States the one hundred and twenty-ninth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, Clerk.

48 UNITED STATES OF AMERICA, ss:

To Emma B. Dresser, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an appeal, filed in the clerk's office of the United States circuit court of appeals for the second circuit wherein Edward B. Whitney as trustee in bankruptcy of Dresser & Co. is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 1 day of February, in the year of our Lord one thousand nine hundred and five.

R. W. PECKHAM,
Associate Justice of the Supreme Court
of the United States.

[Endorsed:] In the supreme court Edward B. Whitney as trustee in bankruptcy of Dresser & Co. bankrupts appellant ag'st Emma B. Dresser appellee Assignment of errors certificate and citation G. H. Gilman att'y for trustee 67 Wall St. N. Y. city Service of a copy of the within assignment of errors certificate & citation is this day admitted Dated N. Y. Feb'y 6, 1905 Joline, Larkin & Rathbone att'ys for claimant Emma B. Dresser

Endorsed on cover: File No. 19,632. U. S. circuit court of appeals, 2d circuit. Term No. 532. Edward B. Whitney, as trustee in bankruptcy of Dresser & Co., appellant, *vs.* Emma B. Dresser. Filed February 17th, 1905. File No. 19,632.